

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 24(1) OF THE LANDLORD & TENANT ACT 1987**

**Ref: LON/00AU/LAM/2011/0030**

---

<b><u>Property:</u></b>	Gable Lodge 334/336 Essex Road, London N1 3PB
<b><u>Applicant:</u></b>	Mr I Rahim (Flat 6), Ms S Rolfe (Flat 9), Ms B Hollows (Flat 4) & Ms G Assmann (Flat 7)
<b><u>Represented by:</u></b>	Maunder Taylor, Chartered Surveyors
<b><u>Respondent:</u></b>	Sunfell Limited Gable Lodge Management Ltd.
<b><u>Date of Hearing:</u></b>	12 March, 30 April & 3 May 2012
<b><u>Leasehold Valuation Tribunal:</u></b>	Ms F Dickie, Barrister, Chairman Mr D Jagger, FRICS Mr J Francis
<b><u>Date of Determination:</u></b>	3 August 2012

**Summary of Determination**

The tribunal makes an order appointing Mr John Fowler as manager for a period of 3 years in the terms attached.

**Preliminary**

1. The subject premises are a mixed use property comprising four shops or business premises on the ground floor and basement levels, three flats (flats 1-3) let on assured shorthold tenancies, and six flats (flats 4-9) let on long leases. The Applicants are the lessees under long leases of certain of those flats. The First Respondent is the freeholder and the Second Respondent is the management

company. Mr L Hoory has a controlling interest in both the freehold and management companies.

2. The tribunal carried out an inspection on 3 May 2012. The six leasehold flats 4-9 ("the leased flats") have a separate and dedicated entrance onto the street which leads to a communal walkway around the perimeter of a flat roof above the shops, from which access is gained to those flats only. There is a separate entrance from the street to the three flats 1-3 which are let on assured shorthold tenancies ("the rented flats"). All meters and conduit intakes for water, electricity and gas are located in the basement for the whole building.
3. The Applicants applied to the Leasehold Valuation Tribunal on 23 December 2011 for an order against the Respondents appointing Mr J Fowler of Stock, Page & Stock as manager under section 24 of the Landlord & Tenant Act 1987 ("the Act"). The relevant legal provisions are sections 22-14 of the Act and are not set out in this decision. The Tribunal issued directions on 5 January 2012.
4. Notice under section 22 of the Act dated 19 April 2010 had been served on the Respondents by Maunder Taylor, acting for the Applicant Ms S Rolfe ("the first notice"). That notice was sent again to the Respondents under cover of a letter dated 29 June 2011 sent on behalf of all the Applicants as further notice pursuant to section 22 of the Act ("the second notice").

### **Background to the Application**

5. The underlying dispute between the parties is that Mr Hoory has for many years separated the management of the six leased flats on one hand from the remainder of the building (the commercial and rented flats) on the other, and he wishes to continue to do so. This is no longer acceptable to the leaseholder Applicants who believe the building should be managed as a whole.
6. A previous application for appointment of a manager for the premises was made to the LVT by some of the Applicants, represented by Maunder Taylor, but was withdrawn when the parties reached agreement in mid 2010 to appoint an independent managing agent, Chesterton Humberts ("Chestertons"). The leased flats were then managed by Chestertons until 31 December 2011 when they brought that management contract to an end. There was substantial disagreement in these proceedings as to the reasons why the arrangement for Chestertons to act as managing agent broke down. It appears that they had sought to increase their fee in light of the unforeseen work involved, but the tenants did not agree to this. The Respondents assert that this workload was at least in a large part caused by the volume of correspondence generated by the tenants.
7. Mr Fowler was then approached to act as managing agent from 31 December 2011, but had taken no steps in light of the pending application and his position as proposed appointed manager.

## **The Hearing**

8. At the hearing on 12 March 2012, listed for a half day, Mr M Maunder Taylor represented the Applicants and Mr R Clegg of counsel the Respondents. The tribunal heard evidence from the proposed manager, Mr J Fowler. The Applicants produced the majority of the documentary evidence that had been prepared for the previous application to the LVT, including witness statements from witnesses not called to give evidence in these proceedings, but not all of the documents referred to therein.
9. The hearing was adjourned on further directions. The reconvened hearing took place on 30 April and 3 May 2012. Mr Clegg again represented the Respondents and Mr B Maunder Taylor acted as the Applicants' representative this time. At the adjourned hearing the tribunal heard further evidence from Mr Fowler, and evidence from tenants Mr Rahman and Ms Assman, and from Mr Hoory.

## **The Leases**

10. The lease for flat 9 dated 11 August 1988 was surrendered and regranted for an extended term in a new lease dated 10 November 2008 for a term expiring on 23 June 2176. It contains the following definitions:
  - 1.3 "The Building" means the Building comprising nine flats and four shops of which the Flat forms part known as Gable Lodge 334/338 Essex Road, London N1.
  - 1.4 "Common Parts" means those parts of the Building not comprised in this Lease or any other lease of a part of the Building granted or to be granted by the Landlord and without prejudice thereto includes the main structure of the Building and the roofs with their gutters and rain water pipes.
  - 1.5 "The Estate" means the Landlord's land surrounding the Building the title to which is registered at HM Land Registry under the title numbers referred to in paragraph LR2 of the Particulars.
  - 1.6 "The Service Obligations" means the obligations undertaken by the Company to provide the services as hereinafter specified.
  - 1.7 "The Service Charge" means the cost of the service obligations.
  - 1.8 "The Tenant's Contribution" means (s) one thirteenth of the cost to the Company of providing the services in the third Schedule hereto and (b) 11% per cent of the cost to the Company Landlord of providing the services specified in the Fourth Schedule hereto PROVIDED ALWAYS that the Landlord may with the prior consent of the Tenant such consent not to be unreasonably withheld or delayed alter the Tenant's Contribution from time to time to take into account any variation (due to building works or otherwise) of the size of the Flat and the other flats in the Building or to take account of any other relative matter.

### **Company's Covenants relating to Service Obligations**

6. The Company covenants with the Tenant and as a separate covenant with the Landlord that the Company will deal with the matters specified in the Third and Fourth Schedules hereto

### **Landlord's Covenants**

7. The Landlord covenants with the tenant as follows:

7.3 To pay a proper proportion of Service Charge in respect of such other parts of the Building as may not for the time being be let under the terms of a lease similar to this Lease.

## **THE THIRD SCHEDULE**

The Company will:

1. Pay all outgoings in respect of the Common Parts and of the Building and such amounts of interest as are charges to the Company on borrowings for the purpose of discharging the Service Obligations prior to receipt of the tenants' contributions for the same
2. Keep the Common Parts and the Service Conduits in the Building in repair and rebuild or replace any parts that require to be rebuilt or replaced
3.
  - 3.1 Keep the Building and any equipment in the Building insured against loss or damage .....
4. Employ and/or retain managing agents surveyors solicitors and accountants and such staff as may be necessary for the reasonable supervision and performance of the Company's covenants hereunder and for the collection and recovery of the Service Charge in respect of the Building.

## **THE FOURTH SCHEDULE**

The Company will:

1. Keep the Common Parts properly clean and in good order and adequately lit.
2. Maintain in a neat and tidy condition all the gardens in the Estate
3. At such intervals as the Company's surveyors shall consider reasonable redecorate and paint the Common Parts ...
7. Employ and/or retain managing agents surveyors solicitors and accountants and such staff as may be necessary for the reasonable supervision and performance of the Company's covenants hereunder and for the collection and recovery of the Service Charge in respect of the Building.

## The Notices under section 22

11. The relevant grounds under section 22(2)(c) in the first notice were as follows:
  - a. That there had been no management function at Gable Lodge provided by the Respondents
  - b. There has been no accounting function at Gable Lodge for many years, no end of year accounts have been provided and no service charges are demanded.
  - c. There is a history of disputes which, without a management function being properly carried out, are likely to continue.
  - d. No managing agent has been instructed and the property is effectively without management.
  - e. The Respondents are in breach of the RICS Management Code.
12. The second notice relied on:
  - a. Disrepair – no major works had been put in hand and no statutory consultation had taken place. Disrepair notified to the Respondents remained outstanding and the property is progressively falling into disrepair.
  - b. No audited accounts for the year end 2010 have been provided and no budget for 2011 to include a surveyor's appraising of the cost of major works.
  - c. Health and Safety - No Health and Safety and Fire Risk Assessment has been carried out of the whole building.
13. Mr Clegg raised a number of points about the validity of the section 22 notice(s):
  - a. He disputed that the Applicants could rely on the grounds in the first notice, which had been a preliminary to proceedings before the tribunal which were withdrawn. Mr Maunder Taylor argued that since the notice had not been withdrawn it could be relied on in these proceedings.
  - b. He observed that the second notice did not comply with the requirements of section 22(2)(a) in that it did not specify the tenants' names and addresses.
  - c. The nature of the disrepair was not set out. This rendered the section 22 notice(s) defective since section 22(2)(c) requires both the grounds and "the matters that would be relied on by the tenant for the purpose of establishing those grounds" to be specified in the notice. Mr Clegg argued that the purpose of the notice is to enable both its recipient and any third party to understand precisely what is said to be deficient in terms of management.

## Evidence and Submissions

14. Mr Clegg contended that the grounds specified in the s.22 notice are the only grounds on which the application could be based. Mr Clegg further argued that the tribunal could only grant an order on the grounds specified in the application. In the section headed "Grounds for Application" the Applicants had written "Please see attached letters served pursuant to s.22 of the LTA 1987, and attached list of grounds for the application". The grounds attached began "The Section 22 Notice (copy attached) sets out the major complaints that the lessees have in this matter" and continues "The freeholder would not agree for the whole building to be managed by a competent managing agent in accordance with the terms of the leases". In summary, it then went on to assert that there was no management or accounting function being carried out, that there is a history of disputes, and that in the circumstances it is just and convenient for an order to be made.
15. It was the Respondents' case that none of the grounds in the notices were made out. The Applicants served no witness or other evidence in support of their application and accordingly it is asserted for the Respondents that there is no evidence in support of the allegations including lack of management or accounting function while Chestertons were managing agents.
16. The tribunal was provided with a copy of a letter dated 11 August 2010 from Simmons Stein solicitors regarding the arrangements for management by Chestertons. Mr Clegg considered that letter, amongst other things, suggested that the managing agents would arrange for repairs to the whole building and Sunfell would contribute for the three flats in accordance with clause 7.3 of the leases and any vacant shops. The commercial lessees (said to be on full repairing leases) would be expected to contribute their share. The tribunal was not provided with copies of the commercial leases.

### *Evidence of Mr Hoory*

17. In giving his evidence, Mr Hoory appeared concerned that the tribunal should understand the physical layout of the premises, in which the 6 leasehold flats have a separate entrance from the street. He explained the history of the building and his intention in selling of the leases of those flats. In 1987 he needed money to complete the building and decided to sell the 6 flats which are completely separate from the rest of the building. He wanted them to be considered separate from the shops and rented flats. Four leaseholders had signed an agreement many years ago to manage the six leased flats at 338. He did not interfere with their management and considered that if the arrangement did not work well it was the responsibility of the leaseholders.
18. Mr Hoory said in his written witness statement that he had "no hesitation in stating that Sunfell and GLM will comply with all of their covenants in the leases of the flats." The tribunal found the oral evidence of Mr Hoory illuminating as to the merits of the application, and it included the following:
  - He denied that any disrepair notified to him had not been attended to. He considered there was nothing seriously wrong with the building but had not

sent a surveyor to report to him on its condition or taken other pro active steps to see if any repairs were necessary.

- He said he took health and safety matters very seriously but did not know anything about these points. He could not give any evidence of steps regarding safety he had taken after a 1992 fire in one of the shops.
- He had not instructed Chestertons to manage the shops. It was not his intention that Chestertons would carry out all the functions of the management company under the leases. The shops have nothing to do with anyone except the landlord.
- He might have received a call regarding someone (a Mr Vanns) wanting to come to the shops but he did not know the nature of that person's duty. He did not call Chestertons to check what Mr Vanns wanted and did not want anyone in the shops until he knew the reason.
- He did not agree that the flat roof was a common part, and considered it to be the landlord's. If Mr Fowler wanted to do work to the whole balcony, Mr Hoory wanted to have the right to approve it.
- He had not paid his major works bill because there was no major works until the question of management had been solved.
- If the tribunal appointed a manager for the whole building who prepared a scheme of major works and issued Mr Hoory with a bill, he said he would not pay it if he did not agree with it, or did not have the money. It would depend on what work the manager was proposing to do, and on his opinion as the landlord.
- Obtaining a certificate regarding the electrical work was not his responsibility but the responsibility of the people who have taken the management for themselves. He would expect to obtain something like a list of management structure responsibility from the insurance company.
- He was not aware if he had a statutory duty to obtain an asbestos report, but would pay if Mr Fowler sent a bill for this, but could not say whether he would pay a large bill for the removal of asbestos from the building – he might or he might not.
- Mr Hoory consults his solicitor about questions relating to the lease, but he said that he believed his solicitor will do what he tells him to do.
- The leases for the shops contain no service charges – they pay rent only. The shop lessees have no repairing obligations. Mr Hoory pays for everything and the shop lessees just pay rent.

### *Repairs*

19. The Applicants relied on a survey inspection obtained by Chestertons in March 2011 detailing the disrepair to the premises. Mr Maunder Taylor argued that it was the failure to progress the consultation process (beyond serving the Notice of Intention) and the implementation of cyclical or major works which constituted the ground.
20. A notice of intention under section 20 of the Landlord and Tenant Act 1985 was served on 19 July 2011 in respect of proposed major works. The Applicants had kept up payment of their annual service charges but withheld payment of their contributions to the anticipated major works owing, it appeared to the tribunal, to a

lack of trust in the landlord and the management arrangements. Chestertons appear to have given up on pursuing the leaseholders for the outstanding service charges owing to that resistance. However, the tribunal understands that the leaseholders' contributions have, since the hearing, all been paid up to date. Sunfell Ltd.'s contribution is understood to be still outstanding and it is alleged that it stopped making payment of routine service charges in June 2011 when Chestertons served notice to terminate their contract.

21. The Respondents assert that no notification was given of any urgent repairs required to the premises, that none are specified in the application, that necessary repairs were addressed by Chestertons and the 2010 budget contained a provision for them. Mr Clegg argued that it is the tenants who have prevented the managing agent from carry out works of repair, whilst at the same time asserting to the tribunal that repairs are required. He submitted that the tenants' conduct is directed at seeking to set up a case for the purposes of this very application. He denied that in the absence of that refurbishment that there was disrepair.

#### *Accounting*

22. Mr Clegg submitted that as a matter of law the alleged breach must subsist at the time of the application itself, but provided no support for this proposition. He relied on evidence that service charge budgets were provided for both 2010 and 2011. The Applicants rely on the failure to serve accounts for the year ending 2010 by the date of the section 22 notice, though it is acknowledged that they were subsequently served in August 2011. A total of four budgets were provided by Chestertons for estimated expenditure in July – December 2010 and the tribunal was provided with a copy of them. Ms Assman considered that the first three did not take account of the Third and Fourth Schedule in the leases.

#### *Asbestos*

23. An Asbestos inspection has not taken place. After the adjourned hearing, and pursuant to a further direction from the tribunal, Mr Maunder Taylor submitted an extract of the Control of Asbestos Regulations 2006 and 2012 and drew the attention of the tribunal to Section 4 "Duty to Manage Asbestos in Non-Domestic Premises", and which requires the duty holder to ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

#### *Health and Safety*

24. Mr Maunder Taylor alleged that the Fire Safety Order requires the responsible person to carry out a suitable and sufficient risk assessment of the risks to which relevant persons are exposed, and to implement and maintain a fire management plan. Article 3(b)(ii) of the Regulatory Reform (Fire Safety) Order 2005 extends this duty to the owner of commercial premises as the responsible person. "Premises" are defined therein to mean "any place" and the "responsible person" is defined in Regulation 3.
25. Mr Maunder Taylor provided a partial copy of the advice document issued by the Local Government Group concerning fire safety in purpose-built blocks of flats,



and referred specifically to paragraphs 27 and 28. The Respondents have contended that they are not the responsible person as the owner of the commercial premises and observe that the matter was not put to Mr Hoory in cross examination. The regulations place various duties upon the responsible person, including the duty to conduct a risk assessment (Regulation 9).

26. The Fire Risk Assessment carried out by Chestertons only pertains to all common exit routes and staircase and flats 3, 4, 6 and 9. No assessment was made of the fire risks associated with the commercial units on the ground floor, and it is understood from Chestertons that this was because access would not be provided to those commercial units. The inspector (Mr Vanns) had not therefore been able to find out if there is a fire separation between the shops and flats.
27. There had been a fire in one of the commercial units in March 2011 and also in 1992 (which resulted in damage to two flats). The Health and Safety Survey carried out by Chestertons found five areas of non-compliance with legal requirements, but the recommendations had not been complied with.
28. Mr Clegg argued that health and safety / fire safety / asbestos were not specified as a ground for the application and therefore an order under section 24 cannot be made on that ground.

### **The Proposed Manager**

29. The tribunal heard evidence from Mr J Fowler, a Certified Management Accountant of Stock Page Stock, a property management firm engaging two chartered surveyors as consultants. He set out his fees and no point was taken on behalf of the Respondents on their amount (subject to dispute as to the powers that should be conferred on a manager).
30. He produced a Management Proposal (which he acknowledged had been drafted not by himself but by Mr Maunder Taylor). Issue had been raised about his ability to act independently as an appointee of the tribunal and the extent of his management responsibilities.
31. Mr Fowler emphasised that if Mr Hoory did not fulfil his obligation under the leases to contribute towards the service charge expenditure, there was no option to forfeit a lease and civil proceedings against him would be the only option unless the appointed manager had the right to collect rents due to him.
32. Mr Fowler was of the opinion that as the shops formed part of the building it would be much easier if an appointed manager was also to manage those shops, and he would be able to ensure that proper health and safety requirements were observed in respect of them. Since there could be structural works required within the shops (e.g fire separation from the flats) it would be easier for the surveyor appointed by a manager of the whole building. It was a safety issue that the fire reports were in place for the whole building. Mr Fowler did not consider that it would be necessary for him to do the letting of the shops and rented flats, but if he were to have the power to collect the rent he could make sure the service charges contributions are paid and make payment of the balance after fees to Mr Hoory.

33. The tribunal advised the parties at the adjourned hearing that, in the event that it ordered the appointment of a manager, it was content that Mr. Fowler should be that manager. Having heard him give evidence is it not concerned that his management plan was drawn up in consultation. He was not paid a fee for doing so and reasonably approved available material that had been prepared. As an accounting expert within a property management company using consultant chartered surveyors, the tribunal is satisfied that he has, or has access to, all requisite expertise. Mr Fowler said he had not met with the lessees though he did write to them when invited to be managing agent. Though he had spoken to Ms Assman on the telephone and she had come to his offices and spoken to his assistant, he had not met her personally. The tribunal has satisfied that his independence has not been compromised.

### **Determination**

34. The tribunal is satisfied as to grounds in section 24(2)(a), (ac) and (b), and that it is just and convenient to make an order appointing a manager, for the reasons that follow.

### *Jurisdiction of the Tribunal*

35. The Application named both the landlord and management company as Respondents. The fact that the latter was not named in the heading of the tribunal's directions was an oversight. The Application was served on both Respondents and there has been no order amending the parties to these proceedings. The management company is therefore a party to these proceedings.
36. The Respondents asserted that the tribunal has no power to make an order providing for powers extending beyond the premises to other residential units and the commercial units and extending beyond management functions to empower the manager to let those residential and commercial units as he sees fit, to control them, and to grant consents generally.
37. Relying on *Cawsand Fort Management Company v Stafford* [2008] 1WLR 371(CA) Mr Clegg argued that the by virtue of section 21(2), the powers in Part II apply only to self-contained premises, and not to other premises, except to the extent of common or shared parts elsewhere. Mr Clegg argued that neither the commercial units nor flats 1-3 can form part of the order.
38. Furthermore, the power to control the letting of the landlord's commercial units and other flats is not a "management function" which the tenants "are entitled to enjoy" in relation to the self-contained premises and therefore not within section 24, he submitted.
39. The tribunal rejects all of these submissions. No support for them can be drawn from the decision of the Court of Appeal in *Cawsand Fort*. Pursuant to section 21(2), the provisions apply to premises "consisting of the whole or part of a building if the building or part contains two or more flats". This is permissive of an application to the whole *or* a part of a building and cannot be construed so as to limit the application to the part of a building where that part of a building contains

two or more flats. The tribunal may appoint a manager to carry out "such functions in connection with the management of the premises" and section 24(11) provides that references to management "include references to the repair, maintenance, improvement or insurance" of the premises.

40. The tribunal is satisfied however that control of the commercial units and flats is a management function. Firstly, and importantly, in the collection of rents. The tribunal, on the oral evidence of Mr Hoory, is satisfied it is likely that he would resist the authority of the manager to plan and execute works of repair at the premises, including major works, even though the landlord is bound by Clause 7.3 to contribute to the cost. Mr Hoory's apparently inability or unwillingness to comprehend the role of an appointed manager and the management structure in the leases is at the root of this. The management functions of the manager cannot be carried out unless he is put in funds by both the tenants and by Mr Hoory, who the tribunal does not understand to have paid his estimated major works contribution to date.
41. Secondly, the question of consents to adaptations is a matter affecting the structural integrity of the building as a whole. It is therefore related to its maintenance, insurance etc. The tribunal sees no reason why the powers of the manager should extend to letting the flats and shops, but considers for the reasons above that the manager should have the power to receive the rents and other charges relating to those tenancies / leases.

#### *Section 22 notices*

42. The tribunal is satisfied that the Applicants are entitled to rely on both the first and the second section 22 notice, since the former was not withdrawn either expressly or by implication when the previous proceedings were withdrawn. In any event, the reference to the first notice within the second notice was sufficient to incorporate its terms within it. Pursuant to section 24(7)(ab) the tribunal furthermore has the power to make an order appointing a manager notwithstanding "that the notice failed in any other respects to comply with any requirement contained in subsection (2)" of section 22. None of the technical objections to the notice raised on behalf of the Respondents are fatal to the application.
43. The tribunal has the power to make an order appointing a manager only if it is satisfied as to one of the specified circumstances in section 24(2). It is satisfied that the contents of the section 22 notices were relied upon in the Grounds specified in the application to the tribunal. The Respondents argued that there was no evidence of any grounds for an order to be made, since the Applicants made bald evidence unsupported by witness or other evidence. They also asserted it would not be just and convenient to make an order which would, in essence, divest the landlord of its property interest in the buildings.
44. The tribunal is satisfied that there is outstanding disrepair at the premises to which the Respondent has not attended in breach of the lease, as set out in the surveyor's report obtained by Chestertons in June 2011. In summary, those works were recovering of the flat asphalt roof, remove plant growth from the building, external redecoration, clearing drainage. Apparently there had been roof/terrace and surface water drainage problems owing to the incorrect fall of the existing flat roof.

45. It was not disputed at the hearing that these works were necessary. It is clear to the tribunal that they represent the current repairs required after many years failure on the part of the Respondent to seek to identify necessary structural repairs. The tribunal is satisfied that the landlord had sufficient knowledge of the current disrepair at the property by virtue of the surveyor's report obtained by his managing agents, that no further particulars were necessary in the notice, and that in any event any deficiency in them does not prevent the tribunal from exercising its power to grant an order.
46. As at the end of the hearing, neither the landlord nor the tenants had paid the demand for the estimated cost of major works. The leaseholders have apparently all now brought their payments up to date. The non-payment by the landlord is itself a breach of obligation under the leases (clause 7.3) relating to the management of the premises (since management cannot take place without his contribution). The existence of the disrepair is a matter of fact, and it was not argued for the Respondents that the tenants' non-payment absolved the Respondent of the repairing obligations under the leases. The fact of the parties' non-payment is a matter going to whether it is "just and convenient" to make the order, and this is considered below.
47. The fundamental dispute between the parties is that Mr Hoory wants to manage the premises in a manner that is contrary to the express management structure in the leases, pursuant to which the leaseholders service charge expenditure is calculated as a percentage of the expenditure on the building as a whole. Separate management of different parts of the building serves to frustrate this structure and those separately managing the leasehold flats have had no power to execute works on the building without Mr Hoory's cooperation. There could be difficulties in statutory consultation with tenants in respect of major works which Mr Hoory carried out to the commercial premises. In giving evidence, Mr Hoory was singularly unable or unwilling to acknowledge the requirement for building-wide expenditure on repairs, cleaning common parts, etc. to be incurred and apportioned according to the leases.
48. This itself, in the view of the tribunal, amounts to a ground under section 24(2)(b) (pursuant to which the tribunal may make an order if satisfied that other circumstances exist that make it just and convenient for the order to be made). Those circumstances are Mr Hoory's refusal to manage the property as a whole. The Respondents are well aware of this fundamental area of dispute. It forms the background to the grounds set out in the notices, was properly referred to within the grounds in the application, and was well tested in evidence at the hearing. The tribunal takes the firm view that it is entitled to make an order on this ground, and that it is proper to do so, notwithstanding drafting issues raised by the Respondents which, though well put, were not persuasive.
49. The appointment of Chestertons could never have addressed the need for building-wide management, since their contract was to manage only the flats. Their letter of introduction to the tenants dated 20 July 2010 began "[W]e have been appointed to manage the flats as detailed above [1-9]". The evidence in support of the grounds relied on by the Applicants amount to various attacks on Chestertons' execution of their management responsibilities (e.g. in failing to progress the major works), but Chestertons' failures are at least in part the result

of their inability to manage the building as a whole (e.g their first service charge budget did not refer to expenditure shared by the landlord).

50. The tribunal is satisfied that the landlord is the responsible person for the purpose of conducting a fire risk assessment. Mr Hoory's oral evidence was to this effect. He has failed to facilitate the preparation of that report with regard to the commercial premises. There have been two fires within the shops and it is a matter of serious concern that Mr Hoory has failed to address the need to identify the existence of any fire separation from the flats.
51. The tribunal is satisfied that he is breach of the RICS Code in having failed to obtain an asbestos report. He has had the benefit of professional advisers and managing agents and should be well aware of the relevant duties. Part 3.1 requires the manager "In undertaking a management function you must observe the terms of the lease and comply with the law." Part 3.20 requires "You must comply with all applicable health and safety requirements that apply. You should devise and maintain, with specialist help if necessary, a health and safety policy and arrange regular risk assessments."
52. Whether or not these two matters were relied upon in the section 22 notice and/or application does not affect these facts and there is no dispute as to the fact that no complete fire safety or asbestos reports exist. These are essential matters of safety for the tenants and it would be wrong to seek to frustrate the purpose of this legislation in a matter in which the tribunal is wholly satisfied as to the necessity for the appointment of a manager.

### **Just and Convenient**

53. Having had the benefit of hearing Mr Hoory giving evidence, it is clear to the tribunal that he does not appreciate and/or accept the management structure required by the leases and that there is little likelihood at the present time that he will follow professional advice on the matter (and that is entirely without criticism of those advisers). The disrepair has been the result of long term management problems which is not the fault of the tenants who have managed their flats, but of the Respondent who has failed to manage the property as a whole.
54. Whilst Mr Hoory said in his witness statement that "the Flats are essentially self contained entities on the upper floors of the Building", they are simply not to be treated as such under the terms of the lease. The fact that the tenants, in order to protect their own investments, have previously taken on management responsibility for the leasehold flats, does not alter this fact. New extended leases have been drawn up in some cases, but the opportunity was not taken to alter the service charge arrangements in them. The management arrangement with Chestertons has failed and any new arrangement made on the same basis is likely to fail also. The tribunal has concludes that it is just and convenient to appoint a manager, and indeed necessary in the interests of safety, notwithstanding its criticism of the tenants in failing to pay their major works service charges promptly.

## Terms of the Order

55. Whilst the tribunal gave further directions at the end of the adjourned hearing, regrettably it did not receive the Applicants' submission dated 9 May in accordance with them until after its receipt at the tribunal office on 21 June. The tribunal invited the parties to seek to agree a draft order, and to notify the tribunal if a further hearing was required on its terms. Having considered the Respondents' submissions in writing, the tribunal is satisfied that no new matters have been raised which need further hearing time. The tribunal has therefore made an order in the terms attached. For the avoidance of doubt, the tribunal considers it has power to appoint the manager to receive the rents and grant consents for the shops and flats 1-3 to ensure that he has funds to meet his obligations under the order, that it is just and convenient to do so, and that these are functions in connection with the management of the premises.
56. The Respondent has objected to the tribunal's indication given at the end of the hearing that if it made an order appointing a manager it would be likely to be for a period of three years. The tribunal gave this indication after hearing the oral evidence of Mr Hoory and is satisfied that three years is a reasonable duration for this order.

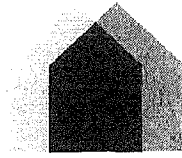
## Costs

57. The tenants seek an order under section 20C of the Act in respect of the landlord's costs of these proceedings, preventing him from adding them to the service charge. The Respondent has referred the tribunal to Veena v Cheong [2003] 1 EGLR 175, which emphasises that there is no automatic expectation of an Order under section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs in defending such conduct." It is implicit in the tribunal's decision that it considers the Mr Hoory has been managing the premises improperly and was wrong to have resisted the tenants' wish that it should be managed as a whole. The tribunal is minded to make an order under section 20C, but considers that the Applicants' case was poorly prepared for the first hearing, which was adjourned. The tribunal is minded to make an order under section 20C of the Act in respect of the landlord costs except those of representation at that first hearing, but allows 14 days for written representations from the parties. The tribunal is not minded to make an order for costs against either party under Schedule 10 of the Commonhold and Leasehold Reform Act 2002.

The tribunal therefore makes an order in the terms attached.

Signed .....

Ms F Dickie



Residential  
Property  
TRIBUNAL SERVICE

**ORDER OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 24 OF THE LANDLORD & TENANT ACT 1987**

**Ref: LON/00AU/LAM/2011/0030**

---

<b><u>Property:</u></b>	Gable Lodge 334/336 Essex Road, London N1 3PB
<b><u>Applicant:</u></b>	Mr I Rahim (Flat 6), Ms S Rolfe (Flat 9), Ms B Hollows (Flat 4) & Ms G Assmann (Flat 7)
<b><u>Represented by:</u></b>	Maunder Taylor, Chartered Surveyors
<b><u>Respondent:</u></b>	Sunfell Limited Gable Lodge Management Ltd.
<b><u>Date of Hearing:</u></b>	12 March, 30 April & 3 May 2012
<b><u>Leasehold Valuation Tribunal:</u></b>	Ms F Dickie, Barrister, Chairman Mr D Jagger, FRICS Mr J Francis

1. In this Order:
  - a. "The property" includes all that building known as Flats 1-9 and Shops 334-338 Essex Road, London N1 3PB.
  - b. "The landlord" means Sunfell Limited or in the event of the vesting of the reversion of the residential leases of the property in another, the landlord's successors in title.
  - c. "The management company" means Gable Lodge Management Company Limited.
  - d. "The lessees" mean the lessees of each of the Flats numbered 4-9.



- e. "The manager" means John Fowler of Messrs. Stock Page & Stock, 83 Goswell Road, London EC1V 7ER.

It is hereby ordered as follows:

2. In accordance with S.24 (1) of the Landlord and Tenant Act 1987 the manager shall be appointed as manager of the property.
3. The order shall continue for a period of 3 years from the date of this order.
4. The manager shall manage the property in accordance with:
  - a. The Directions and Schedule of Functions and Services attached to this Order.
  - b. The respective obligations of the landlord, the management company and lessees under the leases by which the flats at the property are demised by the landlord and in particular with regard to repair, decoration, provision of services to and insurance of the property.
  - c. The duties of manager set out in the Service Charge Residential Management Code (2009) ("The Code") or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S. 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

Ms F Dickie (Chairman)

3 August 2012

## DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the property, the landlord, the management company or the Tribunal.
2. That not later than two weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the manager an orderly transfer of responsibilities. Not later than that date, the applicants, the management company and the landlord shall transfer to the manager all the accounts, books, records and funds (including without limitation, service charge and reserve funds) relevant to the manager's functions under this order.
3. The rights and liabilities of both the landlord and the management company arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall from the date of this order become rights and liabilities of the manager. If the manager is satisfied with the present insurance arrangements, the manager will notify the present insurers of his appointment and request that his interest as manager is noted on the policy.
4. That the manager shall account forthwith to the landlord for payment of all rents received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the said leases.
5. That the manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the leases of Flats 4-9 and in like manner as a deduction from rents received in respect of the landlord's covenant to pay a proper proportion of Service Charge in respect of such other parts of the property as may not for the time being be let under the terms of a lease similar to those leases in accordance with the Schedule of Functions and Services attached.
6. That at the expiry of six months from the date of this order, the manager shall prepare a brief written report for the Tribunal on the progress of the management of the property under the terms of this order up to that date and shall submit the same to the Tribunal by no later than 30 November 2012.
7. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:

- a. any failure by any party to comply with paragraph 2 of these directions and/or;
- b. (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
- c. in the event that there are insufficient sums held by him to pay the manager's remuneration.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **A. SERVICE CHARGE**

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees (in respect of the individual Flats 4-9) and to the landlord (in respect of the individual Flats 1-3 and the four individual shops at ground/basement level) as per the percentage share under the terms of the leases for Flats 4-9 with the balance between the aggregate of those percentages and 100% being payable by the landlord for Flats 1-3 and the four shops.
- 1.2 Demand and collect rents, interim service charges and service charges, insurance premiums and any other payments due from the lessees of the Flats. Demand and collect rents, any service charges and insurance premiums and other payments due from the lessees of the shops and the tenants of Flats 1-3. Instruct solicitors to recover unpaid rents, service charges and other sums in his own name on behalf of the landlord or management company. Instruct solicitors to recover any other monies due to the landlord upon the landlord's instructions, but in the manager's own name on behalf of the landlord.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property and pursuant to the manager's functions within the service charge budget.
- 1.4 In the event of any dispute with any of the parties hereto or any suppliers of goods or services, instruct solicitors as appropriate to defend any action or other legal proceedings, and have the power to make any arrangement or compromise on behalf of the landlord or the management company, save that the manager shall not have the right to continue any such action or other legal proceedings or to make any arrangement or compromise on behalf of the landlord or management company in relation thereto, as shall have been commenced before the date of this order which the landlord or management company shall be at liberty to pursue.
- 1.5 Appoint accountants, architects, surveyors or other such professionally qualified persons as may be reasonably required to assist the Manager in the performance of his functions.

- 1.6 Appoint any agent or servant to carry out such functions or obligations which the manager is unable to perform himself or which can be more conveniently done by an agent or servant and the power to dismiss such agent or servant.
- 1.7 Receive, consider, refuse, grant or otherwise deal with:
  - 1.7.1 Applications for consents or licences of whatever nature as to dealings, alterations or any other matters requiring the consent of the landlord or the management company under the leases which relate to the lessees or as to the individual flats or individual shops. In relation to such applications, the manager shall, where applicable, use his best endeavours to secure a reasonable open market premium and shall account to the respondents therefore. The manager shall have the right to execute such documents on behalf of the landlord or the management company to give effect thereto subject to the provisions of paragraph 1.7.2 below.
  - 1.7.2 The provisions of paragraph 1.7.1 shall be subject to an obligation on the part of the manager to give reasonable notice to the landlord of any applications received by him for consents or licences referred to therein and any consents (and the terms thereof) which he proposes to grant, with the intent that the landlord shall have the opportunity of making observations to the manager on such applications and proposed consents.

## ACCOUNTS

- 2.1 Prepare and submit to the landlord and management company an annual statement of account detailing all monies received and expended on its behalf. The accounts to be certified by an external auditor if required by the manager.
- 2.2 Produce receipts or other evidence of expenditure for inspection.
- 2.3 Produce records or other evidence of income of rents and service charges for inspection.
- 2.4 All monies collected on the landlord's and management company's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of Chartered Surveyors. All service charge and reserve fund monies will be paid into a client account (complying with S.42 of the Landlord and Tenant Act 1987) opened for the property for management purposes and all/any interest received will be credited to the service charge account. All rents received to be paid into a separate client account with any interest accruing to be paid to the landlord pending the manager accounting to the landlord in the manner provided for previously in this order.
- 2.5 The manager to have the power to borrow all sums reasonably required by the manager for the performance of his functions and duties under this order in the event of there being arrears, or other shortfalls, of service charge

contributions due from the lessees or the landlord, such borrowing to be secured (if necessary) on the interests of the defaulting party in the property

PROVIDED THAT the manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld) or in default of that consent, without further order of the Leasehold Valuation Tribunal.

### C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building.
- 3.2 Comply with the statutory consultation procedures as provided for by S.20 of the Landlord and Tenant Act 1985 (as amended) in regard to any works or contracts for which it is anticipated that the S.20 threshold costs will be exceeded.
- 3.3 Set up of a planned maintenance programme to allow for the major works which have already been specified, for future periodic redecoration of the common parts and any other major works required from time to time.

### D. FEES

- 4.1 Fees for the above mentioned management services would be a basic fee of £2,250 p.a. plus VAT. Those services to include the services set out in Paragraph 2.4 of the Service Charge Residential Management Code 2009 published by the RICS. That basic fee to be reviewable annually by any increase in the RPI.
- 4.2 Fees for the collection of rents from Flats 1-3 will be charged at 10% of rents collected plus VAT.
- 4.3 Fees for rents collected from the commercial shop tenants will be charged at 5% of the rents collected plus VAT.
- 4.4 Major works carried out to the property (where it is necessary for the manager to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be subject to a maximum charge of 10% of the cost or a reasonable proportion of it for the manager's execution of part of these tasks. This is in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.

- 4.5 Fees in relation to any Court cases, Tribunal cases, the preparation of insurance valuations or other work outside the scope of the services set out in paragraph 2.4 of the RICS Code will be charged at £200 per hour plus VAT, that fee rate to be reviewable annually by any increase in the RPI.
- 4.6 An additional charge for dealing with solicitor's enquiries on transfer will be made on a time related basis payable by the outgoing lessee.

## E. COMPLAINTS PROCEDURE

- 5.1 The manager shall operate a complaints handling procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.

## F. PARTY COOPERATION

- 6.1 All parties to this order, their servants and agents, shall give reasonable assistance and cooperation to the manager in pursuance of his functions, his duties and his powers under this order and shall not interfere or attempt to interfere with the exercise of any of his said duties or powers otherwise than by due process of law.
- 6.2 The landlord and management company will allow the manager all reasonable access to those parts of the property not comprised in Flats 4-9 in order that the manager might conveniently perform his functions and duties, and exercise his powers under this order.
- 6.3 The landlord, its servants and agents shall permit the manager and assist him as he reasonably requires to serve upon any lessees any notice under S.146 of the Law of Property Act 1925.
- 6.4 The manager shall at not less than quarterly intervals provide the landlord with such information relating to the management of the property as the landlord shall reasonably require.
- 6.5 The manager shall in the performance of his functions and duties, and in the exercise of his powers under this order, exercise all reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers and shall indemnify the landlord and management company in respect of any loss occasioned by any negligent act or omission of himself, his servants or agents.

6.6 The manager shall act fairly and impartially in his dealings with the lessees and with the landlord and the management company.

Ms F Dickie (Chairman)

3 August 2012